

U.S. Department of Labor

Office of Administrative Law Judges
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Date: February 9, 2001

Case No: 1999-BLA-445

In the Matter of

DONALD D. STALCUP

Claimant

v.

PEABODY COAL COMPANY

Employer

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS

Party-in-Interest

APPEARANCES:

Thomas E. Johnson, Esq.
JOHNSON, JONES, SNELLING, GILBERT & DAVIS, P.C.
Chicago, Illinois
For Claimant

Scott A White, Esq.
WHITE & RISSE, L.L.P.
St. Louis, Missouri
For the Employer/Carrier

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

DECISION AND ORDER — AWARDING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. 30 U.S.C. § 901 *et seq.* Under the Act, benefits are

awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis also may recover benefits. Pneumoconiosis, commonly known as black lung, is defined in the Act as "a chronic dust disease of the lung and its sequelae, including pulmonary and respiratory impairments, arising out of coal mine employment." 30 U.S.C. § 902(b).

On January 11, 1999, this case was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held in Bloomington, Indiana on May 16, 2000. The findings of fact and conclusions of law that follow are based upon my analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. They also are based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing. Although perhaps not specifically mentioned in this decision, each exhibit received into evidence has been reviewed carefully, particularly those related to the Claimant's medical condition. The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to "DX", "EX", and "CX" refer to the exhibits of the Director, Employer, and Claimant, respectively. The transcript of the hearing is cited as "Tr." and by page number.

ISSUES

1. The length of Claimant's coal mine employment;
2. Whether Claimant has pneumoconiosis as defined by the Act and regulations;
3. Whether Claimant's pneumoconiosis arose out of coal mine employment;
4. Whether Claimant is totally disabled;
5. Whether Claimant's disability is due to pneumoconiosis; and
6. The number of Claimant's dependents for purposes of augmentation of benefits;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Background and Procedural History

Claimant, Donald D. Stalcup, was born on June 11, 1935. He married Sheila K. Reed on October 31, 1981, and they reside together. On his application for benefits, Claimant alleged that he has one dependent child, Robert L. Stalcup, born May 5, 1982. (DX 01, 04) Pursuant to 20 C.F.R. § 725.209(a), Robert L. Stalcup is not a dependent of Claimant past his eighteenth birthday since he is now older than eighteen years of age, and the record contains no evidence establishing that he is a student or disabled as defined by the regulations.

Mr. Stalcup complains of shortness of breath and takes medications for his breathing problems. He is a lifelong non-smoker.

Claimant filed his application for black lung benefits on March 18, 1998. The Office of Workers' Compensation Programs denied the claim on July 9, 1998, and upon reconsideration, affirmed its denial on August 11, 1998. Pursuant to Claimant's request for a formal hearing, the case was transferred to the Office of Administrative Law Judges for a formal hearing. (DX 23)

Coal Mine Employment

The duration of a miner's coal mine employment is relevant to the applicability of various statutory and regulatory presumptions. At the hearing, the employer conceded that Claimant worked twenty-eight years in qualifying coal mine work. (Tr. 20) Claimant asserts that he has thirty-two years of qualifying coal mine employment. On his Employment History Form CM 911-a, Mr. Stalcup notes twenty-four months of being laid off during that thirty-two year period. (DX 02) There is also a twenty-four month gap in this record, between 1967 and 1969, for which he does not account. (DX 02) His CM 911-a states that he worked at Old Glory Coal Mine from 1965 until 1967, but, after some thought, he testified that he worked at Old Glory from 1965 to 1969. (Tr. 28) Based upon his credibility in all other matters, I find that he worked at Old Glory from 1965 to 1969. Based upon his CM 911-a and his testimony, I find that Mr. Stalcup has thirty years of qualifying coal mine employment.

Mr. Stalcup's last mining position was as a mechanic for Peabody Coal Company at a mine operated in Carlisle, Indiana.

(Tr. 30, DX 02) In his capacity as a mechanic, Mr. Stalcup frequently walked around the mine inspecting equipment, climbing on and crawling under the vehicles to perform maintenance. (Tr. 34-43) He spent approximately four hours per day in the mine pits where dust limited visibility to twenty to fifty feet. *Id.* He was also required to periodically carry machine parts ranging in weight from seventy-five to one hundred fifty pounds. *Id.* Mr. Stalcup was exposed to significant amounts of dust throughout his employment.

MEDICAL EVIDENCE

X-ray reports

<u>Exhibit</u>	<u>Date of X-ray</u>	<u>Date of Reading</u>	<u>Physician/ Qualifications</u>	<u>Interpretation</u>
EX 41	05-18-99	04-14-00	Repsher / B	Negative
EX 40	05-18-99	04-05-00	Castle / B	Completely Negative
EX 39	05-18-99	01-03-00	Shipley / BCR, B	Negative
EX 38	05-18-99	12-31-99	Meyer / B	Negative
EX 37	05-18-99	12-21-99	Perme / BCR, B	Negative
EX 36	05-18-99	12-13-99	Spitz / BCR, B	Negative
EX 35	05-18-99	12-10-99	Wiot / BCR, B	Negative
CX 05	05-18-99	11-03-99	Cappiello / BCR, 1/2	1/2
CX 03	05-18-99	10-29-99	Aycoth / B	1/1
CX 07	05-18-99	10-27-99	Miller / BCR, B	1/1
CX 06	05-18-99	10-25-99	Ahmed / BCR, B	1/1
CX 04	05-18-99	10-22-99	Pathak / B	1/1
CX 01	05-18-99	07-09-99	Cohen / B	1/0
EX 19	12-22-98	07-18-99	Meyer / B	Negative
EX 18	12-22-98	04-30-99	Shipley / BCR, B	Negative
EX 17	12-22-98	04-13-99	Perme / BCR, B	Negative
EX 16	12-22-98	04-04-99	Spitz / BCR, B	Negative
EX 15	12-22-98	03-29-99	Wiot / BCR, B	Negative

<u>Exhibit</u>	<u>Date of X-ray</u>	<u>Date of Reading</u>	<u>Physician/ Qualifications</u>	<u>Interpretation</u>
EX 01	12-22-98	12-22-98	Bosanko / unknown	Negative
EX 29	05-05-98	09-21-99	Perme / BCR, B	Negative
EX 20	05-05-98	04-20-99	Meyer / B	Negative
EX 21	05-05-98	03-19-99	Shipley / BCR, B	Negative
EX 03	05-05-98	01-26-99	Spitz / BCR, B	Negative
EX 02	05-05-98	12-28-98	Wiot / BCR, B	Negative
DX 13	05-05-98	06-24-98	Kattan / BCR, B	Negative
DX 14	05-05-98	05-20-98	Ahmed / BCR, B	1/1
EX 14	11-11-96	05-20-99	Shipley / BCR, B	Negative
EX 13	11-11-96	05-04-99	Perme / BCR, B	Negative
EX 12	11-11-96	04-16-99	Spitz / BCR, B	Negative
EX 11	11-11-96	04-13-99	Wiot / BCR, B	Negative
EX 14	09-30-96	05-20-99	Shipley / BCR, B	Negative
EX 13	09-30-96	05-04-99	Perme / BCR, B	Negative
EX 12	09-30-96	04-16-99	Spitz / BCR, B	Negative
EX 11	09-30-96	04-13-99	Wiot / BCR, B	Negative
DX 11	09-30-96	10-07-96	Cappiello / BCR, B	1/2
EX 14	09-25-95	05-20-99	Shipley / BCR, B	Negative
EX 13	09-25-95	05-04-99	Perme / BCR, B	Negative
EX 12	09-25-95	04-16-99	Spitz / BCR, B	Negative
EX 11	09-25-95	04-13-99	Wiot / BCR, B	Negative
DX 11	09-25-95	10-21-95	Alexander / BCR, B	1/0
EX 14	04-28-94	05-20-99	Shipley / BCR, B	Negative
EX 13	04-28-94	05-04-99	Perme / BCR, B	Negative
EX 12	04-28-94	04-16-99	Spitz / BCR, B	Negative
EX 11	04-28-94	04-13-99	Wiot / BCR, B	Negative

<u>Exhibit</u>	<u>Date of X-ray</u>	<u>Date of Reading</u>	<u>Physician/Qualifications</u>	<u>Interpretation</u>
DX 11	04-28-94	05-04-94	Pathak / B	1/1

CT-Scan reports

<u>Exhibit</u>	<u>Date of CT - Scan</u>	<u>Date of Reading</u>	<u>Physician/Qualifications</u>	<u>Interpretation</u>
EX 19	12-22-98	07-18-99	Meyer / B	Negative
EX 18	12-22-98	04-30-99	Shipley / BCR, B	Negative
EX 17	12-22-98	04-13-99	Perme / BCR, B	Negative
EX 16	12-22-98	04-04-99	Spitz / BCR, B	Negative
EX 01	12-22-98	12-23-98	Zancanaro	Mild CWP

"BR" denotes a "B" reader and "BCR" denotes a board-certified radiologist. A "B" reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by or on behalf of the Department of Health and Human Services (HHS). A board-certified radiologist is a physician who is certified in radiology or diagnostic roentgenology by the American Board of Radiology or the American Osteopathic Association. See 20 C.F.R. § 718.202(a)(ii)(C). The qualifications of physicians are a matter of public record at the National Institute of Occupational Safety and Health reviewing facility at Morgantown, West Virginia.

Pulmonary Function Studies

<u>Exhibit/Date</u>	<u>Physician</u>	<u>Age/Height</u>	<u>FEV₁</u>	<u>FVC</u>	<u>MVV</u>	<u>FEV₁/FVC</u>	<u>Tracing s</u>	<u>Comments</u>
CX 01 05-18-99	Cohen	63 / 68	2.60	4.11	69	63	Yes	
EX 01 12-22-98	Cook	63 / 69	2.14 2.58*	3.6 4.18*	N/A N/A*	59 62*	No	Good cooperation and effort
DX 09 05-05-98	Carandang	62 / 69	2.35	3.71	101	63	Yes	Excellent; coughing, COPD

<u>Exhibit/ Date</u>	<u>Physician</u>	<u>Age/ Height</u>	<u>FEV₁</u>	<u>FVC</u>	<u>MVV</u>	<u>FEV₁/ FVC</u>	<u>Tracing s</u>	<u>Comments</u>
DX 08 05-15-97		61 / 69	2.65	4.03	108	66	Yes	Good; coughing throughout
DX 07 04-28-94	Combs	58 / 69	3.04	4.16	90	73	Yes	Good; coughing throughout, mild obstruction

*post-bronchodilator values

Arterial Blood Gas Studies

<u>Exhibit</u>	<u>Date</u>	<u>pCO₂</u>	<u>pO₂</u>	<u>Resting/ Exercise</u>
CX 01	05-18-99	41.3	83.1	Resting
		36.1	101.3	Exercise
EX 01	12-22-98	48.6	41	Resting
DX 12	05-05-98	41.2	81.1	Resting
		40.5	84.3	Exercise
DX 12	04-28-94	42.7	83	Resting

Narrative Medical Evidence

Reynaldo Carandang, M.D., examined Mr. Stalcup on May 5, 1998. (DX 10) Based upon his physical examination, x-rays, pulmonary function and arterial blood gas studies, a twenty-nine year coal mine history, and a lifelong history of non-smoking, Dr. Carandang opined that Claimant suffered from coal workers' pneumoconiosis. He attributed the disease to "air pollutants" and opined that Mr. Stalcup's moderate impairment was due entirely to pneumoconiosis. Dr. Carandang is Board Certified in Internal Medicine.

James R. Castle, M.D., provided an independent medical review dated April 6, 1999. (EX 10) Dr. Castle reviewed x-rays, pulmonary function and arterial blood gas studies, CT-scan, and reviewed other medical reports. He noted that Mr. Stalcup had a thirty year coal mining history and was a lifelong non-smoker. Dr. Castle opined that the x-rays did not show coal workers' pneumoconiosis, but that the CT scan showed definite pneumoconiosis. He diagnosed Mr. Stalcup with bronchial asthma and noted that there was no radiographically significant pneumoconiosis. He further opined that Mr. Stalcup suffered from a mild to moderate respiratory impairment due to the bronchial asthma, but that he was not totally disabled from a respiratory standpoint. He submitted a supplemental report dated November 4, 1999. (EX 33) Dr. Castle's conclusion are the same as his previous report.

After reviewing additionally submitted medical reviews, Dr. Castle was deposed on July 12, 2000. (EX 52) He continued to opine that Mr. Stalcup suffered from bronchial asthma, but not pneumoconiosis. He further opined that Claimant could perform his previous coal mine employment. Dr. Castle is Board Certified in Internal Medicine with a sub-specialty in Pulmonary Disease.

Robert A. C. Cohen, M.D., physically examined Mr. Stalcup on July 7, 1999. (CX 01) Dr. Cohen reviewed x-rays, pulmonary function and arterial blood gas studies, CT-scan, and reviewed other medical reports. He provided an extensive list of jobs and duties performed by Mr. Stalcup in a noted thirty-two years of coal mine employment. He also noted that Claimant was a lifelong non-smoker. Dr. Cohen opined that Mr. Stalcup has a mild obstructive lung defect due to his exposure to coal dust. He further opines that Claimant is totally disabled from a respiratory standpoint, and that the obstructive impairment from pneumoconiosis is a significantly contributing factor to this total disability. Dr. Cohen provided a supplemental report dated October 31, 2000, in which his conclusions are the same as his previous report. (CX 08) Dr. Cohen is Board Certified in Internal Medicine with sub-specialties in Pulmonary Disease and Critical Care Medicine.

The record contains numerous physical examinations reports from Daniel Combs, M.D. (DX 11) Dr. Combs acknowledges a twenty-seven year coal mine history. The diagnoses contained within these reports are illegible and therefore gives no weight.

David B. Cook, M.D., physically examined Mr. Stalcup on December 22, 1998. (EX 01) He noted a thirty-one year coal mining history and that Claimant was a lifelong non-smoker. Upon reviewing x-rays, and pulmonary function and arterial blood gas studies, Dr. Cook opined that Claimant suffered from hypertension and mild asthmatic bronchitis. He further opined that Mr. Stalcup had some cardiovascular limitations, but that he was not totally disabled. Dr. Cook listed the exertion levels of the jobs Claimant performed in his last coal mine employment and opined that he could resume such work. Dr. Cook is Board Certified in Internal Medicine and Pulmonary Disease.

A. Dahhan, M.D., provided a medical review dated March 29, 1999. Dr. Dahhan reviewed x-rays, pulmonary function and arterial blood gas studies, CT reports, and medical reports. He noted a thirty-two year coal mine employment, and that Mr. Stalcup was a life long non-smoker. He opined that Mr. Stalcup did not have pneumoconiosis, but that he did suffer a mild obstructive defect.

Dr. Dahhan provided a supplemental medical review dated October 19, 1999. (EX 32) He reviewed x-rays, pulmonary function and arterial blood gas studies, CT reports, and other independent medical reviews. Based upon this information, he continued to opine that Mr. Stalcup did not have coal workers' pneumoconiosis, but that he did have a mild reversible obstructive defect. Dr. Dahhan is Board Certified in Internal Medicine and Pulmonary Medicine.

Steven M. Koenig, M.D., provided a medical review dated February 19, 2000. (CX 02) Dr. Koenig reviewed x-rays, pulmonary function and arterial blood gas studies, CT-scan, and other medical reports. He noted a coal mine employment of thirty-two years, listing the jobs and duties performed by Claimant, and a lifelong non-smoking history. Dr. Koenig opined that Mr. Stalcup did not have radiographically significant pneumoconiosis, but that based upon his functional impairment he had a coal dust induced obstructive defect. He stated that coal dust is the only tenable cause of the impairment, because Mr. Stalcup never smoked and no other occupational exposure could account for the impairment. He went on to opine that Claimant was totally disabled from his previous employment based upon his impairment and the exertional requirements of his previous job. Dr. Koenig is Board Certified in Internal Medicine, Pulmonary Disease, and Critical Care Medicine.

Lawrence Repsher, M.D., provided an independent medical review dated March 30, 1999. (EX 08) Dr. Repsher reviewed x-rays, pulmonary function and arterial blood gas studies, and other medical reports. He noted a thirty-one year coal mining history with a detailed job listing and an insignificant smoking history involving "some pipe and cigar." Dr. Repsher opined that Mr. Stalcup could have possible coal workers' pneumoconiosis, but that the pneumoconiosis caused no impairment whatsoever. He further opined that Claimant suffered from some impairment, but that it was a pure variable obstructive defect due to bronchial asthma, and that the impairment did not render him totally disabled. Dr. Repsher provided a supplemental report which was consistent with his previous report.

After a review of newly submitted evidence, Dr. Repsher was deposed on May 3, 2000. (EX 48) He stated that Mr. Stalcup had historically given poor effort on pulmonary function tests. He also noted that based upon his knowledge of Claimant's last coal mine employment, the exertion required in his job was only occasionally high. Dr. Repsher admitted that he had not seen the CT scan, but that it was possible that he had sub-radiographic pneumoconiosis. He also opined that Mr. Stalcup's impairment was purely obstructive, and that coal dust cannot cause obstruction without significant restrictive defects. He further opined that Mr. Stalcup's obesity contributed to his obstructive defect. Dr. Repsher is Board Certified in Internal Medicine, Pulmonary Disease, and Critical Care Medicine.

Peter G. Tuteur, M.D., provided an independent medical review dated April 1, 1999. (EX 09) Dr. Tuteur noted a thirty year coal mining history and that Mr. Stalcup was a lifelong non-smoker. He reviewed x-rays, pulmonary function and arterial blood gas studies, CT-scan, and medical reports. He diagnoses Claimant with hypertension, a hiatus hernia, and "possible" radiographically significant pneumoconiosis. He opines that Mr. Stalcup has a mild impairment, but that he is not disabled from his previous coal mine employment.

In a supplemental review dated October 18, 1999, he changes his opinion based upon newly reviewed evidence, diagnosing Mr. Stalcup with hypertension, and opining that he has no clinically, physiologically, or radiographically significant pneumoconiosis. (EX 31) He further opined that Claimant has no impairment from coal mine employment. He does diagnose an impairment based upon hypertension, but opines that the impairment has not been established as total or permanent.

Dr. Tuteur was deposed on May 9, 2000. (DX 50) Based upon a review of the newly submitted evidence, Dr. Tuteur again diagnoses Mr. Stalcup with a hiatus hernia and hypertension, but not clinically, physiologically, or radiographically significant pneumoconiosis. On deposition he also diagnosed Claimant with gastro-esophageal reflux disease. He opined that Mr. Stalcup is not totally disabled from a respiratory standpoint, but that he is totally disabled due to hypertension. Dr. Tuteur is Board Certified in Internal Medicine and Pulmonary Disease.

DISCUSSION AND APPLICABLE LAW

Because Claimant filed his application for benefits after March 31, 1980, this claim shall be adjudicated under the regulations at 20 C.F.R. Part 718. To establish entitlement to benefits under this part of the regulations, a claimant must prove by a preponderance of the evidence that he has pneumoconiosis, that his pneumoconiosis arose from coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. 20 C.F.R. §725.202(d); See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). In *Director, OWCP v. Greenwich Collieries, et al.*, 114 S. Ct. 2251 (1994), the U.S. Supreme Court stated that where the evidence is equally probative, the claimant necessarily fails to satisfy his burden of proving the existence of pneumoconiosis by a preponderance of the evidence.

Pneumoconiosis

Under the Act, "'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." 30 U.S.C. § 902(b). Section 718.202(a) provides four methods for determining the existence of pneumoconiosis. Under Section 718.202(a)(1), a finding of pneumoconiosis may be based upon x-ray evidence. In evaluating the x-ray evidence, I assign heightened weight to interpretations of physicians who qualify as either a board-certified radiologist or "B" reader. See *Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345 (1985). I assign greatest weight to interpretations of physicians with both of these qualifications. See *Woodward v. Director, OWCP*, 991 F.2d 314, 316 n.4 (6th Cir. 1993); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128, 1-131 (1984).

The evidence of record contains forty-five interpretations of seven chest x-rays. Of these interpretations, thirty-five were negative for pneumoconiosis while ten were positive. Of the ten positive interpretations, six were made by dually qualified physicians. Of the thirty-five negative interpretations, twenty-eight were made by dually qualified physicians. With respect to the April 28, 1994, November 11, 1996, and December 22, 1998 x-rays, all dually qualified physicians found those x-rays negative. With respect to the September 25, 1995, September 30, 1996, and May 5, 1998, only one dually qualified physician found each one of these to represent a positive finding, while at least four other dually qualified physicians found these to be negative. With respect to the May 18, 1999 x-ray, four dually qualified physicians found this x-ray to be negative, while three¹ found it to be positive. There is no evidence contained in the curriculum vitae of any of these physicians which would entitle them to greater or diminished weight. It is Claimant's burden to show by a preponderance of the evidence that he has pneumoconiosis. *Greenwich Collieries, supra*. There are more negative readings of the x-rays by dually qualified physicians, preventing a demonstration of radiographic pneumoconiosis by a preponderance of the evidence. Accordingly, I find that the x-ray evidence fails to support a finding of pneumoconiosis.

Under Section 718.202(a)(2), a claimant may establish pneumoconiosis through biopsy evidence. This section is inapplicable to this claim because the record contains no such evidence.

Under Section 718.202(a)(3), a claimant may prove the existence of pneumoconiosis if one of the presumptions at Sections 718.304 to 718.306 applies. Section 718.304 requires x-ray, biopsy, or equivalent evidence of complicated pneumoconiosis. Because the record contains no such evidence, this presumption is unavailable. The presumptions at Sections 718.305 and 718.306 are inapplicable because they only apply to claims that were filed before January 1, 1982, and June 30, 1982, respectively. Because none of the above presumptions apply to this claim, Claimant has not established pneumoconiosis pursuant to Section 718.202(a)(3).

¹ Drs. Aycoth and Pathak's credentials indicate that they are "Members" of the American College of Radiology, but not that they are Board Certified in Radiology.

Section 718.202(a)(4) provides that a claimant may establish the presence of pneumoconiosis through a reasoned medical opinion. Although the x-ray evidence does not establish pneumoconiosis, a physician's reasoned opinion nevertheless may support the presence of the disease if it is explained by adequate rationale besides a positive x-ray interpretation. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986).

Dr. Carandang's opinion diagnoses coal workers' pneumoconiosis due to air pollutants. While his report indicates that he considered x-rays and pulmonary function and blood gas studies, the report does not state how the findings in these studies affected his diagnosis. A report is properly discredited where the physician does not explain how underlying documentation supports his or her diagnosis. *Duke v. Director, OWCP*, 6 B.L.R. 1-673 (1983). Accordingly, I assign less weight to Dr. Carandang's opinion with regards to the issue of pneumoconiosis.

Dr. Koenig diagnoses Mr. Stalcup with coal workers' pneumoconiosis, stating that coal dust is the only tenable cause of his obstructive defect since he did not smoke, and no other occupational exposure can account for his impairment. He relies on a finding of obstructive defect alone to diagnose pneumoconiosis, and concedes that the radiographic evidence is negative for pneumoconiosis. He does not address the possible causes of the defect diagnosed by the other physicians. A "reasoned" opinion is one in which the judge finds the underlying documentation and data adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19 (1987). Indeed, whether a medical report is sufficiently documented and reasoned is for the judge as the finder-of-fact to decide. *Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc). Dr. Koenig does not point to any authority to demonstrate that, aside from smoking, pneumoconiosis, or any other occupational disease, is the only cause of obstructive impairments. I find this opinion to be inadequately reasoned and entitled to less weight.

Dr. Repsher opines that Claimant has "possible" subradiographic pneumoconiosis. An opinion may be given less weight if it is equivocal or vague. *Griffith v. Director, OWCP*, 49 F.3d 184 (6th Cir. 1995). Therefore, I assign Dr. Repsher's opinion finding "possible" pneumoconiosis less weight.

Dr. Tuteur found that Mr. Stalcup did not have clinically, radiographically, or physiologically significant coal workers' pneumoconiosis. In *Mooney v. Peabody Coal Co.*, BRB 93-1507 B.L.A. (Oct. 30, 1996) the Benefits Review Board deferred to the administrative law judge's reasonable interpretation that "Dr. Tuteur's diagnosis of no 'significant' coal worker's pneumoconiosis, was a finding of 'insignificant' coal worker's pneumoconiosis, which was a positive finding of pneumoconiosis under section 718.202(a)(4)." I find this diagnosis to be a positive finding for coal worker's pneumoconiosis. In finding insignificant pneumoconiosis, Dr. Tuteur reviewed the objective medical data and considered Claimant's employment and social histories. I find his opinion to be well documented and reasoned. See, *Fields, supra*.

Dr. Cohen opines in a well documented and reasoned opinion that Mr. Stalcup has pneumoconiosis. Drs. Cook and Dahhan, in equally well documented and reasoned opinions, opine that Claimant does not have the disease.

In weighing the evidence, I am faced with Drs. Castle, Cohen, and Tuteur's opinions that Mr. Stalcup has pneumoconiosis, and Drs. Cook and Dahhan's opinions to the contrary. Dr. Cohen is Board Certified in Internal Medicine with two sub-specialties, Pulmonary Disease and Critical Care Medicine, entitling him to substantial weight. Drs. Cook, Dahhan, and Tuteur are Board Certified in Internal medicine with one sub-specialty, Pulmonary Disease. Based upon the superior credentials of Dr. Cohen and the bolstering opinions of Drs. Tuteur and Castle, together with the less significant opinions of Drs. Carandang, Koenig, and Repsher, I find that Mr. Stalcup has demonstrated by a preponderance of the evidence that he does have coal workers' pneumoconiosis.

Causation of Pneumoconiosis

Once pneumoconiosis has been established, the burden is upon the Claimant to demonstrate by a preponderance of the evidence that the pneumoconiosis arose out of Mr. Stalcup's coal mine employment. 20 C.F.R. § 718.203(b) provides:

If a miner who is suffering or has suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable

presumption that the pneumoconiosis arose out of such employment.

I have found that Mr. Stalcup was a coal miner for thirty years, and that he had pneumoconiosis. Claimant is entitled to the presumption that Mr. Stalcup's pneumoconiosis arose out of his employment in the coal mines. No physician opining as to the presence of pneumoconiosis offers an alternative cause to rebut this presumption. See, *Smith v. Director, OWCP*, 12 BLR 1-156 (1989). Therefore, I find that Mr. Stalcup's pneumoconiosis arose from his coal mine employment.

Total Disability

A miner is considered totally disabled when his pulmonary or respiratory condition prevents him from performing his usual coal mine work or comparable work. 20 C.F.R. § 718.204(b). Non-respiratory and non-pulmonary impairments have no bearing on a finding of total disability. See, *Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Section 718.204(b) provides several criteria for establishing total disability. Under this section, I first must evaluate the evidence under each subsection and then weigh all of the probative evidence together, both like and unlike, to determine whether Claimant has established total respiratory disability. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Under Sections 718.204(b)(2)(i) and (ii), total disability may be established with qualifying pulmonary function studies or arterial blood gas studies. A "qualifying" pulmonary function study yields FEV₁ values that are equal to or less than the applicable table values found in Appendix B of Part 718. In addition to the qualifying FEV₁ values, the Claimant must also produce values that are equal to or less than the applicable table values for FVC or MVV, or a FEV₁/FVC ratio of less than fifty-five percent. See 20 C.F.R. § 718.204(b)(2)(i), (ii). Mr. Stalcup failed to produce a study with a qualifying FEV₁, and therefore did not produce a qualifying study. A qualifying arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendix C of Part 718. Mr. Stalcup also failed to produce a qualifying arterial blood gas study.

Section 718.204(b)(2)(iii) provides that a claimant may prove total disability through evidence establishing cor

pulmonale with right-sided congestive heart failure. This section is inapplicable to this claim because the record contains no such evidence.

Under Section 718.204(b)(2)(iv), total disability may be established if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a respiratory or pulmonary impairment prevents the miner from engaging in his usual coal mine work or comparable and gainful work.

Dr. Carandang opined that Mr. Stalcup had moderate impairment to his pulmonary function. He attributes the impairment to pneumoconiosis. Dr. Carandang does not discuss Mr. Stalcup's last coal mine employment, nor does he discuss the exertion required to perform his last coal mine employment. His finding of moderate impairment without a knowledge and discussion of his job requirements is vague, and, therefore entitled to less weight. *Parsons v. Black Diamond Coal Co.*, 7 B.L.R. 1-236 (1984).

Dr. Castle opined that Mr. Stalcup is not totally disabled from a respiratory standpoint. He admitted on deposition that he was unfamiliar with the job requirements of Mr. Stalcup's last coal mine employment. (Tr. 41-45) A "documented" opinion is one that sets forth the clinical findings, observations, facts, and other data upon which the physician based the diagnosis. *Fields, supra*. Dr. Castle demonstrated a lack of familiarity with the facts regarding Mr. Stalcup's employment. Therefore, his opinion is not well documented on this issue, and is entitled to less weight.

Dr. Repsher opined that Claimant was not totally disabled due to coal dust exposure. He stated that coal dust exposure cannot cause an obstructive impairment without a significant restrictive impairment. This is contrary to 20 C.F.R. § 718.201(a)(2) defining pneumoconiosis as obstructive or restrictive. An opinion contrary to the Act is properly entitled to less weight. *Wetherill v. Green Construction Co.*, 5 B.L.R. 1-248, 1-252 (1982).

Dr. Tuteur opined in his first medical review that Mr. Stalcup had only a mild impairment. After reviewing more evidence, he opined in his second review that Mr. Stalcup was disabled, but that totality and permanency had not been

established. After a full review of the medical evidence, Dr. Tuteur opined in his deposition that Claimant was totally disabled as a whole person, but that he was not totally disabled from a pulmonary standpoint. I find his documentation and reasoning to be adequate, as well as his explanation of the changes in his opinions. See, *Fields, supra*.

In well documented and reasoned opinions on this issue, Drs. Cohen and Koenig opine that Claimant is totally disabled. In equally well documented and reasoned opinions, Drs. Cook, Dahhan, and Tuteur opine that Claimant is not totally disabled from a pulmonary standpoint. Drs. Cohen and Koenig are Board Certified in Internal Medicine with dual sub-specialties in Pulmonary Disease and Critical Care Medicine. Based upon these credentials I give their opinions greater weight. Furthermore, Drs. Cohen and Cook physically examined Mr. Stalcup, entitling their opinions to additional weight. *Bogan v. Consolidation Coal Co.*, 6 B.L.R. 1-1000 (1984).

Based upon the credentials and the examining physician status of Dr. Cohen, bolstered by the well documented and reasoned opinion of Dr. Koenig with respect to this issue, I find his opinion to be entitled to the most weight. Therefore, I find that the weight of the medical opinions supports a finding of total disability.

In weighing the evidence together, I am faced with non-qualifying pulmonary function studies and arterial blood gas studies, but medical opinions supportive of a finding of disability. I accord more weight to the narrative findings in the medical opinions and therefore find that Mr. Stalcup has demonstrated, by a preponderance of the evidence, that he is totally disabled.

Total Disability due to Pneumoconiosis

Upon demonstrating that he is totally disabled, Claimant must establish that his total disability is due at least in part to pneumoconiosis. *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Youghiogeny & Ohio Coal Co. v. McAngues*, 996 F.2d 130, 17 BLR 2-146 (6th Cir. 1993), cert. denied, 114 S.Ct. 683 (1994); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989). 20 C.F.R. §718.204(c)(1) provides that a miner is totally disabled due to pneumoconiosis where pneumoconiosis, as defined in §718.201, is a substantially

contributing cause of the miner's total disability. The Seventh Circuit holds that pneumoconiosis must be a "*simple* contributing cause" of the miner's total disability (pneumoconiosis must be a necessary, but need not be a sufficient, cause of miner's total disability). *Hawkins v. Director, OWCP*, 907 F.2d 697, 707 (7th Cir. 1990); *Shelton v. Director, OWCP*, 899 F.2d 690, 693 (7th Cir. 1990).

Drs. Castle, Cook, and Dahhan opined that Mr. Stalcup did not have pneumoconiosis. Opinions regarding the etiology of disability from physicians who did not diagnose pneumoconiosis may be accorded less probative weight. *Peabody Coal Co. v. Shonk*, 906 F.2d 264 (7th Cir. 1990). Accordingly, I give these physicians less weight on the issue of causation of total disability.

Dr. Carandang opines that Mr. Stalcup's disability is due entirely to pneumoconiosis. As noted above, however, his opinion lacks documentation and reasoning, entitling it to less weight. Dr. Castle's opinion is also inadequately reasoned as he has demonstrated a lack of familiarity with Mr. Stalcup's employment requirements and history, as noted above.

Dr. Koenig diagnoses Claimant with pneumoconiosis. His diagnosis is based upon a lack of smoking history and no other occupational explanation for his pulmonary impairment. Since he does not address other causes of obstructive defects, I find his opinion with regards to the causation of disability to be entitled to less weight. As noted above, Dr. Repsher's opinion is also entitled to less weight, in that his opinion regarding the presence of an obstructive defect in the absence of a restrictive defect is contrary to the regulations.

In weighing the evidence regarding the etiology of total disability, I am faced with Dr. Cohen, opining that pneumoconiosis was a significantly contributing factor in Claimant's disability. I am also faced with Dr. Tuteur's opinion that pneumoconiosis did not significantly contribute to his total disability. Dr. Cohen is Board Certified in Internal Medicine with a sub-specialty in Pulmonary Disease, as is Dr. Tuteur. Dr. Cohen, however has the added credential of a sub-specialty in Critical Care Medicine, and physically examined Mr. Stalcup. Based upon these qualifications I give Dr. Cohen's opinion more weight with regards to the etiology of total

disability. Therefore, I find Mr. Stalcup totally disabled due to pneumoconiosis.

ENTITLEMENT

In the case of a miner who is totally disabled due to pneumoconiosis, benefits commence with the month of the onset of total disability. Where the evidence does not establish the month of the onset of total disability, benefits begin with the month during which the Claimant filed his application for benefits. *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). Based upon my review of the record and the limited evidence provided, I cannot determine the month that Claimant became totally disabled due to pneumoconiosis. Consequently, Mr. Stalcup shall receive benefits commencing March 1998, the month during which this claim was filed.

ORDER

The Employer, Peabody Coal Company, is HEREBY ORDERED to pay:

1. To the Claimant, all benefits to which the miner was entitled under the Act commencing March 1, 1998;
2. To the Claimant, all medical and hospitalization benefits to which the miner was entitled commencing March 1, 1998; and
3. To the Secretary of Labor, reimbursement for any payment the Secretary has made to the Claimant under the Act and to deduct such amounts, as appropriate, from the amount the Employer is Ordered to pay under paragraphs 1 and 2 above.

Rudolf L. Jansen
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty (30) days from the date of this Decision by filing a Notice of Appeal with the Benefits

Review Board at P.O. Box 37601, Washington D.C. 20013-7601. A copy of this Notice of Appeal also must be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C. 20210.